

Application No.: 10/047,220

Docket No.: 29488/38131

REMARKS

An office action issued in this application on April 28, 2005 requiring election between the following species:

Species I, drawn to a dumping station having a bin, a releasable latch, a controller, and a collection area with a conveyor.

Species II, drawn to a dumping station having a first bin with a first releasable latch, a second bin with a second releasable latch, a controller, and a collection area with a conveyor.

The office action notes that claim 1 is generic to both species.

In response, **applicants elect Group II**. Accordingly, at least claims 1 and 38 are pending. However, all pending claims read on Species II, and thus this election is made with traverse if the examiner chooses to withdraw any of the pending claims.

All Claims Remain Pending.

Despite the election of Species II, all claims remain pending in this application. The office action admits that the dumping station with one bin recited in claim 1 is generic to both of the asserted species. This is necessary because the claim language of claim 1 is open-ended, i.e. it uses the term "comprising," and therefore claim 1 covers devices with one bin – Species I – and more than one bin as well – Species II. All claims dependent from claim 1 simply recite further aspects of the generic dumping station of claim 1. Every single limitation of the claims depending from claim 1 also cover a dumping station with two bins. None are restricted to a system with a single dumping station. Accordingly, claims 2, 3, and 5-14 cannot be withdrawn because they are all generic to both species.

Further, claims 15-23 also cannot be withdrawn. Claim 15 also recites one bin using open-ended language, and thus is presumably a part of Species I. Claim 15 is also generic to both asserted species because the claim language of claim 15 covers both species, i.e., there is no language in claim 15 restricting the coverage to a single bin. Further, all limitations of the claims dependent from claim 15 could easily be a part of a dumping station with two bins. Accordingly, claims 15-23 also cannot be withdrawn as they are all generic to both asserted species.

Application No.: 10/047,220

Docket No.: 29488/38131

No Showing Has Been Made That Each Group is Patentable over the Disclosure of the Other Groups.

35 U.S.C. § 121 states that restriction is only proper when "two or more independent and distinct inventions are claimed in one application." MPEP § 802.01 outlines that distinctness can only be found when "two or more subjects as disclosed... ARE PATENTABLE (novel and unobvious) OVER EACH OTHER" (emphasis in original).

Thus, in this restriction requirement, the office action is admitting that the disclosure of Species I is patentable over the disclosure of Species II. The office action is admitting that a dump station with a single bin is patentable over any prior art disclosure of a dump station with two bins. This position is necessary for entry of the restriction requirement by the Patent Office. The office action makes no showing of how a system with a single bin is patentable over a system with two bins.

If the restriction requirement is upheld, the applicants can and will rely on this admission during examination of this application and any continuing or divisional applications. If this position is not to be taken by the Patent Office, then the applicants request that the restriction requirement be withdrawn.

CONCLUSION

As outlined earlier, applicants elect Group II, but with traverse if any claims are withdrawn. Reconsideration and withdrawal of the restriction requirement is solicited for the foregoing reasons. Consideration and examination of all claims pending in the application is requested.

Application No.: 10/047,220

Docket No.: 29488/38131

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, the examiner is invited to telephone the undersigned at the below-listed number.

Dated: May 19, 2005

Respectfully submitted,

By 

Russell C. Petersen

Registration No.: 53,457

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant